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To: [Kent Smith](#)
Subject: Historic Federal and State Supreme Court Rulings
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1st of the Month

Affordable Housing Technical Review

Historic Federal and State Supreme Court Rulings



Issue #60

July 2015

To Our LDC Clients and Colleagues:

The last week in June was like a 4th of July celebration, bursting with numerous landmark rulings by the state and federal Supreme Courts, notably:

- **Inclusionary Housing:** The California Supreme Court upheld local inclusionary housing ordinances which give cities and counties the authority to enact laws requiring builders to include a certain number of affordable units in each new development.
- **Affordable Care Act:** The U.S. Supreme Court ruling on the Affordable Care Act will assure that subsidized health care will remain after the President leaves office in 2017.
- **FHA Disparate Impact:** The Supreme Court upheld the application of "disparate impact" under the Fair Housing Act, ruling that claims of racial discrimination in housing cases shouldn't be limited by questions of intent.
- **Redistricting:** U.S. states' efforts to counter extreme gerrymandering won a victory as the Supreme Court ruled in favor of a bipartisan Arizona panel that draws the state's districts.
- **Same Sex Marriage:** The Court ruling makes it legal in all 50 states, establishing a new civil right for millions of Americans.

At the state level, LDC is closely tracking at least 18 key bills under debate in the legislature relating to affordable housing and homelessness. Among these is AB 1335 that would establish a \$350 - \$500 million annual permanent housing fund. The legislature has less than three months to move these bills forward through the second house and on the Governor's desk in September.

The Federal FY 2016 budget reconciliation process lies immediately

ABOUT US

[LeSar Development Consultants](#) and our affiliate [Estolano LeSar Perez Advisors LLC](#) provide a full range of strategic and technical advisory services to clients creating physically, economically, and environmentally sustainable communities.

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ahead and will determine if the post-sequestration belt-tightening plan approved by Congress prevails. The Congressional budget, which the White House has threatened to veto, pushes for continued federal spending caps and targeted cuts in housing, workforce training, education and other programs.

In contrast, California's FY 2015-2016 Budget boosts funding to several post-recession programs, including the Affordable Housing for Sustainable Communities (from \$130 million to \$400 million). Similarly, CalWORKS Housing Support Program will receive \$35 million in the coming year - \$15 million more than this past year, its first of operation. In addition, \$405 million in New Market Tax Credits were awarded last month to ten California CDFIs

My team and I wish you and yours a safe and happy holiday,

Jennifer LeSar signature



Jennifer LeSar
President



NATIONAL UPDATES

Historic Supreme Court Rulings in June

Despite the extremely conservative House Plan to reduce funding for a range of social entitlements, the last week in June 2015 marked several major U.S. Supreme Court decisions that defy this trend, specifically:

- On June 25, by a 6-3 ruling the Court ruled that the Affordable Care Act (popularly referred to as "Obamacare"), which currently provides health care insurance to 16 million individuals nationwide through federal



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UPCOMING EVENTS

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August 21, 2015
San Diego, CA

[2015 American Planning Association California Conference](#)

October 3-6, 2015
Oakland, CA

subsidies, will remain. The House FY 2016 budget would have repealed ACA.

- Also on June 25, the Supreme Court upheld the application of "disparate impact" under the Fair Housing Act. The Court ruled that claims of racial discrimination in housing cases shouldn't be limited by questions of intent. The court affirmed a Court of Appeals decision in a case in which a nonprofit group, the Inclusive Communities Project, said that the Texas Department of Housing and Community Affairs had contributed to "segregated housing patterns by allocating too many tax credits to housing in predominantly black inner-city areas and too few in predominantly white suburban neighborhoods."

The 5-4 ruling endorses the notion of citing disparate impact in housing cases, meaning that statistics and other evidence can be used to show

decisions and practices have discriminatory. While upholding the theory of disparate impact, the Court imposed significant limitations on its application in practice. In a landmark opinion, a divided Supreme Court ruled by a 5-4 vote on June 26 that states cannot ban same-sex marriage, establishing a new civil right and handing gay rights advocates a historic victory.



2015 Annual San
Diego Housing
Federation
Conference

October 28-29, 2015
San Diego, CA

State Supreme Court Upholds Inclusionary Housing Ordinances



On June 15th, the California Supreme Court upheld the authority of cities and counties to enact laws requiring builders to include a certain number of affordable units in

each new development. The California Building Industry Association, which is threatening to appeal the ruling by taking it to the U.S. Supreme Court, claims that such ordinances amount to a government confiscation of property and can be justified only if a

particular development would cause a shortage of affordable housing. In a 7-0 ruling the court rejected that argument on the basis that inclusionary housing laws, which require some units in each development to be priced below market rates, are similar to local regulations controlling housing size and density. The industry challenged a San Jose ordinance that has not yet taken effect. Over 170 local governments in California have affordable housing ordinances.



Federal Budget: Will It Reflect Innovation and Expansion or More Spending Cuts?



The amount of federal funding available next year for affordable housing, transit and community development depends on whether the FY 2016 Transportation, Housing and Urban Development (T-HUD) spending bill passed by

the U.S. House of Representatives on June 9 stands or there is push-back from the White House. The House-approved budget delivers only slight increases above FY 2015 funding levels for existing HUD and other agency programs, but offers little support for innovative initiatives.

The White House has threatened to veto the bill due to objectionable policy riders and insufficient funding levels. For example, although the House budget includes \$55.3 billion in discretionary funding for T-HUD programs -- a \$1.5 billion increase from the FY 2015 funding level - it is \$9.7 billion below the President's budget request. In other instances, the House bill freezes or reduces funding for several programs of importance to counties, including grant programs that support infrastructure and community development in rural and urban areas. For example, the HUD appropriations bill from Congress contains \$6.4 billion for Community Planning and Development Local Housing Grants, \$85.6 million below the FY 2015 enacted level.

According to the Center on Budget and Policy Priorities, the Congressional Budget plans get two-thirds of cuts -- \$3 trillion over ten years beginning in 2016 - from programs for people with low or

moderate incomes. The budget also eliminates 15 federal job training programs through the Workforce Innovation and Opportunity Act. Programs in disadvantaged communities relating to nutrition and elimination of food deserts also would not fare well. For example:

- U.S. Department of Agriculture spending bills currently in the House Appropriations Committee would eliminate funding for the national Healthy Food Financing Initiative (HFFI) which funds the construction of grocery stores and other healthy food retail establishments to underserved neighborhoods.
- Another program taking a hit in the House budget includes the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); the House budget proposes \$6.5 billion for WIC, a \$139 million decrease from FY 2015.
- Additional cuts to the SNAP food assistance program, on top of those that have occurred recently, would cut off approximately 1 million of the nation's poorest people from SNAP over the course of 2016.



STATE UPDATES

California's New Budget Reflects the State's Growing Economy



California lawmakers on June 19th passed a compromise \$115.4 billion budget to meet Governor Jerry Brown's demands for restrained spending, even as the package sends billions more to public schools and increases spending on health care

and social services. The budget increases the number of state-subsidized childcare slots, gives in-home support workers a raise, and expands state-subsidized health care coverage to children from low-income families who are in the country illegally. It also provides funding for the state's first-ever Earned Income Tax Credit program benefiting up to 2 million Californians. The Governor has called two special sessions to address how California pays for roads, highways and other infrastructure, and Medi-Cal, the state's health care program for the poor.



California Legislative Update - At Mid-year, the Heat is On

Important bills relating to affordable housing and homelessness have moved to the second house in the legislature for consideration, with the exception of AB 1335. As one of four bills comprising the **Building Jobs and Homes Act of 2015**, AB 1335 would establish a \$300 million to \$500 million permanent source of funding for affordable housing by placing a \$75 fee on real estate transaction documents, excluding home sales. Although the bill passed out of the Appropriations Committee on May 28th and was ordered to a third reading by the Assembly with amendments (June 3rd), AB 1335 is not subject to the June 5th deadline and was not taken up for a vote. The Legislature has less than three months to move bills introduced in early 2015 through the hearing process before the September deadline to get them on the Governor's desk for signing this year.



Funding Opportunities and Awards

- **Multi-family Housing Program (MHP) - General Component:** The State Department of Housing and Community Development (HCD) released its 2015 \$47 million MHP Notice of Funding Availability on June 16th. Funding provides low-interest (3 percent), long-term loans for eligible affordable housing projects (those receiving 9 percent tax credits are ineligible). Applications are due August 6, 2015.
- **Affordable Housing and Sustainable Communities (AHSC):** The California Strategic Growth Council (SGC) announced it will award \$121.9 million in competitive grants and loans to 28 housing and transit-friendly infrastructure projects. Out of 54 complete final applications received, approximately half were funded; these clearly demonstrated significant quantifiable reductions in greenhouse gas



emissions through a transit component. SGC will conduct "lessons learned" workshops throughout the state in July. The second round of AHSC funding will have approximately \$400 million for affordable housing. The list of AHSC awardees is posted on the SGC website: <http://www.hcd.ca.gov/financial-assistance/affordable-housing-and-sustainable-communities/>

- **Veterans Housing and Homeless Prevention Program (VHHP)**
Funding Awards: On June 30, HCD (in partnership with the California Department of Veterans Affairs and the California Housing Finance Agency) announced the results of the first round of Proposition 41 and the VHHP funding, which will direct \$62 million to 17 housing developments statewide.
- **New Market Tax Credits (NMTC):** The U.S. Department of the Treasury's Community Development Financial Institutions (CDFI) Fund has announced the 76 community development entities (CDEs) selected to receive \$3.5 billion in new market tax credit allocation authority. Ten California CDEs were awarded NMTC allocation authority for next year totaling \$405 million. A complete list of the organizations selected and additional information about the NMTC announcement can be found on the CDFI Fund's website: www.cdfifund.gov
- **2015-16 Greenhouse Gas Reduction Grant and Loan Programs:** California's FY 2015-16 Budget authorized a total of \$60 million for CalRecycle to administer grant and loan programs. The loan program funding level is approximately \$4.6 million. CalRecycle announced it would release application materials for the Greenhouse Gas Reduction Fund grant programs in July 2015. Funding can be used for construction of recycling business facilities, including food waste composting. For more information, go to the CalRecycle website website: www.calrecycle.ca.gov/Climate/GrantsLoans/default.htm



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